SUPREME COURT, U. S.

OCT 3 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 593

LOUIS BALTHAZAR AND DORETTA BALTHAZAR, HIS WIFE,

Plaintiffs-Appellants,

vs.

MARI LTD., AN ILLINOIS CORPORATION, AND ALLAN L. BLAIR; JOHN BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AS REPRESENTATIVE OF ALL CHIEF JUDGES OF CIRCUIT COURTS IN THE STATE OF ILLINOIS,

Defendants-Appellees.

ON APPEAL FROM A DECISION OF A THREE-JUDGE COURT OF THE DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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Defendants-Appellees.

ON APPEAL FROM A DECISION OF A THREE-JUDGE COURT OF THE DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

Appellee John Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, by his attorney, Edward V. Hanrahan, State's Attorney of Cook County, Illinois, pursuant to Rule 16 of the United State's Supreme Court moves that the final judgment of the three-judge Court be affirmed on the ground that the judgment conforms with

prior decisions of this Court, and it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

THE ISSUE PRESENTED.

Does the Illinois statute pertaining to the sale of real estate to satisfy delinquent tax judgments violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

THE STATUTES INVOLVED.

These are adequately set out in the Jurisdictional Statement.

STATEMENT OF THE CASE.

On April 24, 1963, the Plaintiffs filed a Complaint in the District Court alleging the following facts: In 1964 the Plaintiffs failed to pay $500.00 in taxes upon real estate in which Plaintiffs had a total investment of $16,000.00. In 1966 the Plaintiffs' real estate was sold at public sale to the Defendant, Mari Ltd., to satisfy this delinquency. Pursuant to the Illinois Statute in question, the amount of the sale price was limited to the amount of the tax judgment, $500.00, plus interest not to exceed 12% every six months. During the two year period of redemption, the Plaintiffs failed to redeem, and in 1968, upon application of Mari Ltd., a tax deed issued to that defendant. The Plaintiffs allege that the statutory process whereby the Defendant obtained a tax deed was unconstitutional in that the sale price of the property was limited to the amount of the tax judgment and was not a public sale designed to obtain the market value of the property, and therefore the difference between the amount of the judgment and market value, called by the Plaintiffs "surplus

value", was taken without just compensation and due process of law.

The Defendants moved to dismiss the complaint on the grounds that the complaint failed to state a claim upon which relief could be granted.

On June 27, 1969, a three-judge Court, examining the question of the constitutionality of the statutes involved upon the facts alleged in the Complaint, held that the statutes were constitutional and dismissed the complaint for failure to state a claim.

ARGUMENT.

The Decision of the Three-Judge Court Dismissing the Plaintiffs' Complaint Was Consistent With Decisions of This Court.

In selecting the methods of taxation and the means to enforce the collection of taxes, states are vested with a great deal of discretion. This Court has held that the requirements of the Due Process Clause are satisfied when such statutes provide notice and an opportunity for the owner of the property to protect against forfeiture. (*King* v. *Mullins*, 171 U. S. 404) Contrary to the argument of the Plaintiffs, there is no constitutional requirement that any public sale be conducted prior to a taking of property for the failure to pay taxes. A state may simply forfeit land to satisfy delinquent taxes. (*Kentucky Union* v. *Kentucky*, 219 U. S. 140; *King* v. *Mullens*, 171 U. S. 404) Administrative methods rather than judicial proceedings can be used in the collection of taxes. (*Palmer* v. *McManon*, 133 U. S. 660; *Scottish Union Nat. Ins. Co.* v. *Bowland*, 196 U. S. 611)

In addition to the foregoing general principles of law in this area, this Court has specifically ruled adversely

to the argument of the plaintiffs now raised. In *Nelson* v. *New York City*, 352 U. S. 103, this Court had before it a city ordinance that provided for a forfeiture of property to the city to satisfy delinquent water charges. After the city forfeited the property of the delinquent taxpayer, the property was sold to a private person and the city retained all the proceeds. The amount of the delinquent water charges was far less than the fair market value of the property. When the plaintiff in *Nelson* claimed that this "surplus value" was taken without due process of law, this Court dismissed that claim and said:

> "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recover any surplus, retain the property or the entire proceeds of its sale. We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings."

Nelson v. *New York City*, 352 U. S. 103, 110.

The defendants submit that the *Nelson* case is controlling authority in the instant case.

The Plaintiffs attempt to avoid the holding of *Nelson* by repeatedly charging that the Illinois statute in question "absolutely precludes an owner from obtaining surplus proceeds" (J. S. 6); and the delinquent taxpayer has "no means whatsoever" to obtain the surplus value of his property. (J. S. 6) Just how the statute in question "precludes" the taxpayer from recovering surplus value is a mystery left unsolved by Plaintiffs. Obviously nothing in the wording of the statute stops the taxpayer from using any method he wishes to satisfy the delinquency during the redemption period. The statute places no bars or restrictions upon the taxpayer's dealing with his property as he sees fit to do. The Plaintiffs' latter charge, that by

operation of the statute there are no means available to the taxpayer to recover surplus value, is completely baseless. The taxpayer has a full two-year period to mortgage his property and use the proceeds to satisfy the tax lien, or the taxpayer can choose to sell his home on the open market subject to the tax lien. The delinquent taxpayer is free to use any other means he wishes to retire this debt. Certainly, giving a taxpayer a two-year period freely to manage his affairs and obtain a loan to keep his property or alternatively to sell his property to recover full market value is far superior to the forced public sale suggested by Plaintiff. The difficulty with the Plaintiffs' present position is that they let the two-year period slip away without taking any action to save their property or investment. This places these Plaintiffs in the same position as the Plaintiff in *Nelson*, and the holding in *Nelson* is consistent with the order of the three-judge Court below.

CONCLUSION.

For the foregoing reasons, the Defendant, John Boyle, Chief Judge of the Circuit Court of Cook County, respectfully moves this Court to affirm the judgment of the district Court.

Respectfully submitted,

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